

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WA.No. 102 of 2002(A)

AGAINST THE JUDGEMENT IN OP.25980/2001
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APPELLANT: PETITIONER

D.SUKUMARI, VADAKKEVELI,
S.L.PURAM.P.O., ALAPPUZHA.

BY ADV. SRI.BENOY THOMAS
SRI.PAULSON THOMAS

RESPONDENTS: RESPONDENTS

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1. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM P.O.,
TRIVANDRUM.
 2. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.
 3. DISTRICT CO-OPERATIVE BANK, ALLEPPEY,
REPRESENTED BY ITS SECRETARY, ALAPPUZHA.
ADDL R4 V.T. REMANI, SREEVALSAM, KANNANKARA P.O.
CHERTHALA, ALAPPUZHA
 - R5. SANALKUMAR N.P., NIKARTHIL HOUSE
KODANTHURUTH, KUTHIYATHODU P.O.
CHERTHALA
 - R6. T.K.JAYARAM, THATTEKKATTU,
CHEPPAD P.O., ALAPPUZHA
- (ADDL. R4 TO R6 IMPEADED AS PER ORDER DATED 23/12/2005
ON I.A. 3661 OF 2005)
- ADDL. R7. SAJAN BABU K.K., AGED 43 YEARS,
S/o T.K. KARUNAKARAN
KALARICKAL HOUSE, KANJIRAM CHIRA P.O. ALAPPUZHA 7

(ADDL. R7 IMPEADED BY ORDER DATED 31/07/2006
ON I.A. 542/2006)

R1 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
ADDL. R7 BY ADV. SRI.D.SOMASUNDARAM
R3 BY ADV. SRI. T.R. HARIKUMAR ,SC,ALAPPUZHA DIST.CO.OP.BANK

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 29/06/2007, THE COURT ON 09/07/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 102 of 2002

Dated: 9th July 2007

JUDGMENT

Radhakrishnan,J.

Original petition was preferred by the appellant seeking a writ of certiorari to quash Ext. P5 and also for a writ of mandamus directing the first respondent to treat her as fully qualified for the purpose of Rule 187 of the Kerala Co-operative Societies Rules and to consider the application for appointment to the post of Clerk/Cashier in the Alleppey District Co-operative Bank against the source envisaged under Rule 187.

2. Public Service Commission had invited application as per Ext. P1 notification for appointment to the post of Clerk/Cashier on 26.10.1999 in all the District and other Apex societies. Petitioner also applied in the category of 50% vacancies reserved for the employees of the primary co-operative societies. Application was however rejected on the ground that she was not an employee of the primary co-operative society on 16.12.1999, the date of her

application. Learned single judge dismissed the original petition holding that the appellant did not satisfy the conditions laid down in Ext. P1 notification. Aggrieved by the same this appeal has been preferred.

3. Sri Benoy Thomas, counsel appearing for the appellant laid considerable emphasis on the decision of the apex court in Benny v. Registrar of Co-operative Societies (1998 (1) KLT 858) and contended that on the basis of unamended rule 187 she is entitled to be considered for the purpose of appointment to the post of Clerk/Cashier. The apex court in paragraph 17 of the judgment held as follows:

“In a plain reading of R. 187, by itself, it is difficult for us to accept the conclusion arrived at by the High Court to the effect that 50% of the vacancies are reserved for employees of Primary Co-operative Societies affiliated to the Bank. A combined reading of Rr. 186 and 187 would lead to the only conclusion that though the qualification for the posts of “Clerk” had been enumerated in R. 186 but in respect of 50% of vacancies arising in the apex society, the in service candidates serving in the Primary Societies will get the advantage as their experience would be treated as an additional qualification. In this view of the matter, it is difficult for us to hold that under R. 187, 50% of the vacancies in the apex society is kept reserved for the in service candidates serving in the Primary Societies.”

Counsel submitted that Rule 187 was amended only on 02.05.2000 and the notification was published by the Public Service Commission

on 26.10.1999 and therefore on the last date for submission of application she was qualified on the basis of unamended Rule 187. Argument is very attractive, but in the absence of any challenge to the notification the same cannot be countenanced. Admittedly as per Ext. P1 notification petitioner was not eligible to apply and her application was not entertained in the light of amended Rule 187. Public Service Commission in the additional affidavit filed in the appeal on 11.10.2004 has stated the reasons for incorporating such conditions in the notification. It is stated that the Recruitment Rules were framed by the District Co-operative Bank concerned in consultation with the Commission and the Recruitment Rules came into force on 11.08.1998. District Co-operative Bank, Alleppey amended the Staff Recruitment Rules incorporating Rule 9 in the Rules by its resolution No 18 of the Board Meeting dated 26.4.2000 with retrospective effect from 11.8.1998. It is on the basis of the above decision Public Service Commission had taken up the stand that no requisition was received from the appointing authority. Since notification is not under challenge we are of the view, the principle laid down in the decision in Benny's case, supra cannot be imported to the facts of this case.

4. Further we also notice that persons similarly placed had approached this court in several other writ petitions and those writ petitions were dismissed. In the appeal filed before the Division Bench, the Division Bench in Vijayan v. The Kerala Public Service Commission (2005 (1) KLT 440) upheld the stand of the Public Service Commission taking the view that 50% of the vacancies in each district should be reserved for employees of Primary Co-operative Societies and an applicant would be eligible only if he was an employee of a Primary Co-operative Society which is affiliated to the District Co-operative Bank in which the application was made and not otherwise. We are of the view, the principle laid down in the above decision would squarely apply to the facts of this case. In such circumstances, we do not find any reason to take a different view from that of the view taken in Vijayan's case. Appeal therefore lacks merits and would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

09/07/2007
en/

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